



Opposition in Russia: The Trials of Alexei Navalny

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Alexei Navalny is the leading opposition leader in Russia. He is also currently serving a lengthy prison sentence in a Russian correctional colony.

This lecture will look at the use of the processes of the law by the Russian state to silence and isolate Navalny and to neutralise other forms of internal dissent. It will consider more widely the state of the rule of law in Russia since its invasion of Ukraine.

Introduction

I want to start by reminding you of an extraordinary story. It is 20 August 2020. Alexei Navalny, the well-known opposition activist, politician, and campaigner, has flown to Tomsk in Siberia to make a film about local corruption. On the plane back to Moscow he starts howling and crying in pain.

The flight diverts to the nearest airport at Omsk, where Navalny is rushed to hospital. He is now in a coma. The doctors who tend to him assert that no trace of poison can be found – they suggest, rather improbably, that his condition may have been caused by low blood sugar levels. Navalny is at the time a fit and healthy man in his early 40s.

Navalny's wife Yulia arrives from Moscow. The hospital seems to now be filled with more police officers than doctors. The authorities demand proof that Yulia is indeed his wife. They also say that Navalny has not actually given permission for her to see him; and I suppose it could be said that being in a coma is not conducive to giving affirmative assent to being visited by anyone.

After Navalny is eventually released from the Omsk hospital he is flown to Germany to be cared for by German doctors in Berlin. The clothes he was wearing at the time of the incident are seized by the Russian authorities.

In Berlin toxicological tests show that Navalny has indeed been poisoned, with a type of novichok nerve agent. You will remember that this was the same substance that was used in the attempt to murder Sergei Skripal in Salisbury in 2018.

Navalny is brought out of a medically induced coma only on 7 September and is discharged from hospital on 22 September. This was clearly a very serious incident. In fact, the investigation that is subsequently carried out by the Organisation for the Prohibition of Chemical Weapons concludes that the novichok used was a previously unknown version, more toxic and dangerous than already known variants, and that it had been intended that Navalny would die on the plane as it headed towards Moscow.

The only reason Navalny had survived was a combination of two quick decisions; that of the pilot to make an emergency landing at Omsk and that of the doctors to inject Navalny with atropine, an antidote, when he initially arrived at hospital.

After his release from hospital Navalny remains in Germany in order to regain his health. But he also investigates the circumstances of his poisoning. With the assistance of journalists and the investigative website Bellingcat, he makes extraordinary discoveries about the identity of the assassination squad which

had tried to kill him. His team tracks down their names, their mobile phones, their movements. It turns out that a team of 8 members of the FSB – that is Russia’s Federal Security Service – had been tracking Navalny for about 3 years.

By contrast the Russian police, having conducted their own investigation, close the case, on the grounds that it had found no sign that a crime had been committed.

There is often a performative element in the modes of Navalny’s forms of protest. In a remarkable coup de theatre Navalny decides to telephone the various suspected participants in the assassination attempt, posing as a member of the governmental bureaucracy. These phone calls are filmed. In one of these calls, he gets through to an operative who unwittingly provides a commentary on the reasons for the failed murder attempt. In a wide-ranging conversation, the man uses the most elaborate circumlocutions:

“Well, they landed [the plane], and the situation developed in a way that... Not in our favour, I think. If it had been a little longer, I think the situation could have gone differently.”

The conversation then moves in the realms of the surreal. Here is a passage:

Navalny’s underwear had been laced with novichok! You can actually see footage of this astonishing telephone conversation in a fine film that was released earlier this year, simply entitled *Navalny*, directed by Daniel Roher, and which is still available on the BBC iPlayer.

What is also astonishing is that once he has regained his strength Navalny decides to return to Russia. He does so having publicly accused the President of Russia of having himself personally ordered his murder and knowing that he will almost inevitably be arrested on his return. This is despite the fact that **he** is the person who is the victim of a crime.

On 17 January 2021 Navalny takes a flight from Berlin airport. The flight is due to arrive at Vnukovo airport and his supporters gather to welcome him. The flight is then diverted to another airport “for technical reasons.” He is duly arrested immediately he disembarks. Here is his welcoming committee.

For what, you ask? Given the story I have so far unfolded the answer may not be surprising, even if it is still shocking. Navalny had 6 years earlier received a suspended sentence of three and half years in prison in a criminal prosecution known as the Yves Rocher case. The terms of the suspension required him to report physically twice monthly to a probation officer in Russia. Navalny was now being arrested because he had, by being outside of Russia for the previous 5 months, a month of that time in hospital, violated the terms of his probation: he had failed, as he was obliged to do, to report twice a month in person.

And on 2 February 2021 Navalny appears in a Moscow Court. Because of the breaches of the terms of his probation his suspended sentence is reactivated. According to one account the judge reads off the sentence quickly and monotonously. He must now spend the next two and a half years in a penal colony.

It will immediately be obvious that this was – as Navalny himself put it – “ultimate lawlessness”. A man was being punished for having been removed in a coma to Germany – with the acquiescence of the Russian authorities - to save his life. And many Russians are similarly appalled. That day there are protests on the streets. Over 1,500 people are detained by the police.

As we will discover one of the key weapons utilized by the Russian state against those who seek to resist or challenge the status quo is the law. When I tell you that the conviction rate in Russian criminal courts is 99.8% you will immediately see that the court system is very unlike the court system in England, or indeed any Western countries.

Navalny

Let me say a little more about Alexei Navalny. He was born in Moscow in 1976. He studied law and then finance and in the 1990s was a vigorous supporter of Yeltsin’s free market reforms. He became a member of a small liberal party. He flirted with nationalist politics for a while and became known as a minority shareholder and anti-corruption campaigner. He publicly questioned what became of the profits made by companies which never seemed to declare dividends to its shareholders. He started investigating state

contracts which seemed to be very inflated. He even set up a website tracking the existence of potholes on Russia's roads and demanding to know what was being done to fill them in. Navalny understood the power of the internet and became famous for his videos, laced with black humour and irony, in which he would expose alleged corruption in the Russian state.

Perhaps his most famous video is about Dmitry Medvedev, the former Present and Prime Minister of Russia. It is called *Don't Call Him Dimon*, a reference to the diminutive of Medvedev's first name. In it Navalny claims to trace the vast scale of Medvedev's ill-gotten wealth. This video has had 45 million views on YouTube

Such is Navalny's chutzpah that two days after his return to and arrest in Moscow in January 2021, his organisation another video, this time about President Putin's own alleged vast wealth and in particular a sprawling mansion on the Black Sea which he apparently owned, and which had apparently cost almost \$1billion to construct. The video, *Putin's Palace. History of World's Largest Bribe* had attracted 100million views within days of its publication.

Yves Rocher Case

Navalny's life has been dogged by prosecutions and legal actions against him. I have earlier mentioned the Yves Rocher case, which is what saw him jailed in February 2021. It related to a contract between a company run by Navalny's brother and the Russian subsidiary of the French cosmetics company Yves Rocher for the distribution of parcels sent out by Rocher.

Under the contract that company charged Rocher so many rubles per package and then sub-contracted the work to another company for a lower price. That way it made a profit. The facts disclosed simply involve, on an everyday level, the workings of the market economy. In one sense they are staggeringly banal. Yves Rocher itself did not assert that it had been defrauded.

Yet, just after Navalny – in his capacity as an anti-corruption campaigner – had looked into the activities of the chief of the investigative committee of the Russian Federation, a Mr Bastrykin, he was charged, alongside his brother with fraud and embezzlement. During the court process he was placed under house arrest for a whole year. And then he was found guilty and sentenced to a suspended prison sentence of three and a half years.

Navalny challenged his conviction before the European Court of Human Rights. In a judgment delivered in 2017 that court decided that Navalny's and his brother's prosecution and conviction had been a breach of Article 7 of the Convention. Here is the text of Article 7:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

In essence, the citizen of a country must be able to assess whether or not a proposed course of conduct that they wish to embark upon is criminal or not. This is what the Court went on to say:

“The Court reiterates that the guarantee enshrined in Article 7 of the Convention is an essential element of the rule of law. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment...Article 7 of the Convention is not confined to prohibiting the retroactive application of criminal law to the disadvantage of an accused. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty...and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined in law.”

Here the Navalny brothers simply could not have foreseen that the normal commercial activities they engaged in could subsequently be characterized as criminal. Moreover, the acts imputed to them as being fraudulent were indistinguishable from regular commercial activities.

You might say, well here is just an example on its facts of a criminal court making a mistake. What does this tell me about how the law is being abused against dissenters?

Kirolves Case

Well, the Yves Rocher trial was not the first occasion when Navalny had found himself in the criminal courts of Russia. Let me go back to 2012. By this time Navalny had become a prominent political figure. He has been leading the public protests and rallies against President Putin's election in March. He has been imprisoned for short periods of time for participating in unlawful gatherings.

And then he is charged with embezzlement in relation to a timber factory called Kirovles. The facts are again trivial. In 2008 Navalny had advised the timber factory that in order to attract customers it join forces with a timber trading company which would buy the timber and then attempt to sell it into the open market. Again, the charge was essentially that the trading company had made a profit in that it had bought at a lower price than it had sold for. The essence of capitalism you might say.

For two years, from 2010-2012, local investigations could find nothing criminal. Then on 5 July 2012 the Chief of the Investigative Committee, Mr Bastrykin, spoke at its general meeting. He condemned, in particular, the decision to close the criminal investigation in respect of the first applicant. In the extract broadcast on Russia's main TV channels, he stated [SLIDE 9]:

“You have got a man there called Mr Navalny. The criminal case, why have you terminated it without asking the Investigative Committee superiors? Today the whole country is discussing [this fraud], the talks [between Mr Navalny and Mr Belykh] have been published, and we cannot hear anything except grunting. You had a criminal file against this man, and you have quietly closed it. I am warning you, there will be no mercy, no forgiveness if such things happen again. If you have grounds to close it, report it. Feeling weak, afraid, under pressure – report! We will help, support you, take over the file, but quietly, like that – no ...”

2 weeks later Navalny published an article accusing Mr Bastrykin of corruption. 5 days later Navalny was charged with conspiring to dissipate assets.

Navalny's trial commenced in April 2013. At the same time, he was running in the election to be Mayor of Moscow. In July he was sentenced to five years in prison for embezzlement. It has been noted that the judge who sentenced him had at that stage conducted 130 trials and had never yet found any defendant not guilty. The election takes place in September. Despite everything Navalny wins 27% of the vote.

As I say the facts as disclosed represent simple commercial conduct, a contract between a sales company and a timber company. Yet somewhere in the Russian criminal courts they were converted into the crime of embezzlement. After Navalny had been convicted he took this case to the European Court of Human Rights. It heard the case in 2016, a year before it considered the Yves Rocher case, and ruled that there had been a violation of his human rights.

“115. As such, the courts found the second applicant [Navalny's co-accused] guilty of acts indistinguishable from regular commercial middleman activities, and the first applicant [i.e., Navalny] for fostering them. The Court considers that in the present case the questions of interpretation and application of national law go beyond a regular assessment of the applicants' individual criminal responsibility or the establishment of corpus delicti, matters which are primarily within the domestic courts' domain. It is confronted with a situation where the acts described as criminal fell entirely outside the scope of the provision under which the applicants were convicted and were not concordant with its intended aim. In other words, the criminal law was arbitrarily and unforeseeably construed to the detriment of the applicants, leading to a manifestly unreasonable outcome of the trial.”

It is I think important to note that neither of these cases were brought against Navalny directly in relation to his political activities. On the face of it they were ordinary cases of commercial fraud far removed from his public persona.

What they demonstrate is the willingness of Russian courts to criminalise ordinary activity to suppress and delegitimise dissenters. These prosecutions – alongside numerous civil claims – also have the effect of entangling Navalny and people like him in protracted disputes. Litigation is stressful, costly and hugely time-consuming.

Running for the President

These prosecutions also served another purpose.

By 2016 Navalny had set his sights even higher than the mayoralty of Moscow: the presidency of Russia. The election was due to take place in March 2018. He announced his candidature in December 2016. But it was derailed. The ECHR's decision earlier that year had annulled Navalny's conviction in the Kirovles timber case. How did the Russian courts respond? Well, they tried him again and in February 2017 he was convicted again, and five years suspended sentence imposed on him.

The consequence? Navalny was barred from running in the election by the electoral commission.

Green Antiseptic

During his presidential campaign, in 2017, Navalny was in Siberia opening a local headquarters of his Anti-Corruption Foundation when he was doused in green antiseptic by an unknown assailant. Here he is after the attack.

All over Russia Navalny's supporters started posting photographs of themselves sporting green painted faces. As part of this act of collective support Navalny's campaign manager, Alexei Volkov, circulated a photoshopped image of a famous statute called Motherland Calls. Here it is. It is in Volgograd, formerly Stalingrad, and is the tallest sculpture in Europe, at 85m. And how was it photoshopped? By showing the face of the sculpture pixelated in green.

When this became known protestors apparently took to the streets to protest against this perceived slight against Russian patriotism. A criminal investigation followed, personally supervised by the head of the Investigative Committee, our old friend Alexander Bastyrkin. An investigator from Moscow made a trip all the way to Volgograd to "collect evidence". Volkov was charged with the crime of vandalising a war monument contrary to article 243 of the Criminal Code. That reads as follows:

"Destruction or damage of monuments of history, culture, natural monuments, or facilities protected by the State, and also of objects or documents of historical or cultural value, shall be punishable by a fine in the amount of 200 to 500 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to five months, or by deprivation of liberty for a term of up to two years."

You may think we are entering into a rather frightening world. The supposed desecration took place in virtual space. The actual statute was not touched in any way. An online photograph of the statute's face was coloured green – not so far as I understand it an inherently offensive colour. In March 2019 Volkov was fined 200,000 rubles.

Denying Nazism

The other Article Volkov was apparently prosecuted under was Article 354.1 of the Code, introduced in 2014 as part of the so-called Law Against Rehabilitation of Nazism. This Article makes it a crime:

"To deny facts recognized by the international military tribunal that judged and punished the major war criminals of the European Axis countries" – i.e., the Nuremberg Tribunal.

to approve of the crimes the Nuremberg tribunal judged.

"To spread intentionally false information about the Soviet Union's activities during World War II"

as well as to spread

“Information on military and memorial commemorative dates related to Russia’s defense that is clearly disrespectful of society, and to publicly desecrate symbols of Russia’s military glory.”

The maximum sentence for an infringement of Art 354 is 3 years in prison.

Some European countries make it a criminal offense to deny the Holocaust, but we can immediately see that we are moving here to a new level. Article 354 has been used expansively by the Russian prosecution authorities to outlaw versions of history which run counter to the narrative which the Russian state wishes to promulgate: i.e., one which ensures to the unquestioning glory of the Russian and Soviet state and its military activities. We see here the criminal law being deployed to impose a narrative which equates any form of criticism of Russian state activity in the past, or indeed the present, as a form of Nazism.

One consequence of this law has been that any historical discussion about cooperation between Hitler and Stalin in the run up to the Second World War, atrocities committed by the Red Army during the war, or the post-war Soviet occupation of Eastern European countries, can be qualified as “rehabilitation of Nazism”. Everyone who opposes the official line can be accused of being a “Nazi”. It would probably be a crime now in Russia to post on-line famous cartoons such as the following.

You think I am exaggerating? Well, the most notorious example of a prosecution under this law was the decision by a court in Perm to convict a blogger called Vladimir Luzgin, who was handed a fine for reposting in the popular Russian social network Vkontakte a link to an online article which asserted that the Soviet Union and Nazi Germany “actively collaborated in dividing Europe according to the Molotov-Ribbentrop Pact, jointly attacked Poland and unleashed the Second World War.” Luzghin was convicted of, and I quote, “circulation of false information about the activities of the USSR during the years of World War II.” Russia’s Supreme Court upheld his conviction.

Now there are two things to say about it, so it seems to me. The first is what kind of state is it which actually criminalises discussion about its own past. Secondly, and perhaps more fundamentally, what was said in this article was no more than the truth. On 17 September 1939 the Soviet Union commenced the occupation of large parts of Eastern Poland. By 6 October the entire country had been divided between Germany and the Soviets.

Alexei Navalny is never far away from these ominous legal developments. After he had been incarcerated on his return to Moscow in January 2021 further charges were levelled against him concerning his supposed defamation of a World War II veteran. In 2020 a government video was made promoting certain constitutional amendments – in particular those that would allow President Putin to run for two more terms in the Kremlin after 2024. In this video a variety of people appeared – including the veteran – voicing their support for these changes. Navalny responded to this video by describing the participants as “corrupt hacks”. He was duly convicted. But he was not given a separate prison sentence because the law under which he was prosecuted, as it stood, did not permit it. There are some limits that Russian judges will not cross.

This weakness in the criminal law was quickly remedied. A month later the State Duma, the lower house of Russia’s parliament, adopted legislation that introduced a new crime of “public dissemination of knowingly false information about World War II veterans”, with a sentence of up to 5 years in prison. The State Speaker said: “It is unacceptable to insult those who defended the motherland...It is our duty to protect the memory of our grandfathers and great grandfathers, thanks to whom we are alive today.” No wonder it is today considered unsafe to sell or stock books by eminent and objective historians such as Sir Anthony Beevor or John Keegan in Russia.

The use of the courts to rewrite history extends even further. During the 1990s after the fall of Communism, there was a concerted effort to uncover the crimes of the Soviet period, and in particular to commemorate the deaths of those who had perished at the hands of the Soviet state. Museums and places of remembrance were created. In modern Russia such critical of the past are no longer welcome. Why? Because the cult of Russian greatness that has been assiduously curated over the last 20 years or so has embraced the Soviet Union as well. As the man who defeated Nazism, Joseph Stalin is a hero once again. It is now a dangerous thing to draw attention to his crimes.

Let me briefly tell a very sad story which exemplifies this. In 1997 Memorial, the NGO dedicated to the memory of the victims of Soviet repression, discovered a former NKVD mass execution site at Sandarmokh in Karelia. During the Great Terror some 10,000 people of 60 different ethnicities were murdered there and their corpses thrown into communal pits. In particular hundreds of Ukrainian writers and intellectuals were murdered here. A historian called Yuri Dmitriev, who was instrumental in discovering the site, formed a kind of open-air museum and conducted tours. He has devoted many years of his life to the memory of the dead and has published widely. He caused this memorial stone to be erected. It reads "People, Do Not Kill one another!"

By 2014 it was clear that his work was attracting the displeasure of the authorities. Dmitriev received threats. The tyres on his car were slashed. And then he was charged with possession of child pornography. He was then charged with sexual abuse of his stepdaughter. He has been in prison since December 2016 and is now serving a 15-year sentence. An account of the legal actions against him would itself fill many pages. Whether he ever comes out of prison is open to question.

This is by no means a unique event. Across Russia those who seek to investigate the past and uncover its iniquities are being oppressed and criminalised. The organisation which Dmitriev was part of - Memorial - was banned in December of last year by a Moscow Court – as having violated the foreign agent law. The prosecutor told the court that Memorial "created a false image of the Soviet Union as a terrorist state. It made us repent of the Soviet past, instead of remembering glorious history [...] probably because someone is paying for it."

It is now being suggested that Sandarmokh, where the mass graves were found, was not a place of Soviet repression at all, but that in fact it was a Finnish execution site, used during the war between Finland and the Soviet Union during the early 1940s. So, the falsification of history continues.

Invasion of Ukraine

As we all know, on 24 February 2022 Russia invaded Ukraine. And in its wake the war against truth moved up a notch. Within a few weeks, in March 2022, the so-called Russian fake news law was added to the criminal code. The new law provides for a prison sentence of up to 15 years for knowingly disseminating false information about the Russian Armed Forces or discrediting them. This law signalled the end of an independent media in Russia. And it has led to mass prosecutions. The first person imprisoned under this law was a man called Alexei Gorinov, a lawyer and local politician. At a council meeting he asked "How can we talk about a children's drawing competition, when children are dying every day?! About 100 children have been killed in Ukraine, and children are becoming orphans. I believe that all efforts of civil society should be aimed at stopping war and withdraw troops from Ukraine." He was sentenced to 7 years in prison.

And Navalny?

We left Navalny on 2 February 2021 with his suspended sentence ordered to take effect and confined to a Penal Colony. We can now see what an extraordinarily brave decision he made to return from the comfort and safety of Germany to the danger of Russia.

Was his sentence the end of his travails? You can guess immediately that it was not. Perhaps enraged that he had not had the decency just to die on that plane from Tomsk to Moscow, the state has unleashed its fury upon him.

I have already mentioned his conviction for insulting a World War II veteran.

Next he was prosecuted under embezzlement charges. It was said against him that he had purloined \$4.7million from his own anti-corruption organisation. This is the same organisation – the Anti-Corruption Foundation - which was forced to close by the Russian authorities as a supposed extremist organisation in June of last year. The outcome was of course inevitable. On 22 March 2022 he was found guilty and given a 9-year sentence in a maximum-security prison. His appeal was dismissed in May 2022.

The heart of the charges was that it was said that Navalny fraudulently raised money for this presidential campaign despite knowing that due to his conviction he would be unable to participate in it. Effectively, the

authorities argue that Aleksei Navalny's anti-corruption work and his presidential campaign were a sham, the purpose of which was to cover up his embezzlement of donations.

And the authorities are even now apparently preparing further charges against Navalny, connected to his membership of a so-called extremist organisation.

It seems that the aim now of the State is to keep Navalny in prison essentially forever.

Yesterday in the *Sunday Times* Mark Galeotti wrote about how Russia was slowly turning into a version of North Korea. Navalny's own personal history is a testament to that tragic trajectory. He started out his adult life with hopes for a liberal future. Democracy flourished for a while in Russia. It is now being dismantled. Protest is increasingly difficult. The civic organisations that are vital to democratic society are being dismantled. The rule of law is a mere charade. To mis-quote from the famous phrase of Sir Edward Grey at the beginning of the First World War the lights of Russia are going out.

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